

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

ANNIE TUMMINO, <i>et al.</i> ,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 12-CV-763
	)	
MARGARET HAMBURG, Commissioner	)	(Korman, J.)
of Food and Drugs, <i>et al.</i> ,	)	(Pohorelsky, M.J.)
	)	
Defendants.	)	
	)	

## **DEFENDANTS' NOTICE OF CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendants hereby move for summary judgment on Count I of the Second Amended Supplemental Complaint for the reasons set forth in Defendants' response to the Court's order to show cause [Case No. 12-763, Doc. No. 23] and Defendants' opposition to Plaintiffs' motion for a preliminary injunction and for summary judgment [Case No. 12-763, Doc. No. 37], in addition to those set forth in the accompanying memorandum. *See* Fed. R. Civ. P. 56.

Because most of the relevant issues have already been extensively briefed, Defendants incorporate their previous arguments by reference to avoid burdening the Court with repetitive papers. The accompanying memorandum addresses only those issues that, in Defendants' view, would benefit from further briefing.

Dated: July 20, 2012

*Of Counsel:*

DAVID J. HOROWITZ  
Deputy General Counsel

ELIZABETH H. DICKINSON  
Chief Counsel  
Food and Drug Division

ERIC M. BLUMBERG  
Deputy Chief Counsel, Litigation

SCOTT A. KAPLAN  
Assistant Chief Counsel  
U.S. Department of Health & Human Services  
Office of General Counsel  
10903 New Hampshire Avenue  
Silver Spring, MD 20993-0002

Respectfully submitted,

STUART F. DELERY  
Acting Assistant Attorney General

LORETTA E. LYNCH  
United States Attorney  
Eastern District of New York

IAN HEATH GERSHENGORN  
Deputy Assistant Attorney General

SHEILA LIEBER  
Deputy Director, Federal Programs Branch

F. FRANKLIN AMANAT  
Assistant United States Attorney  
271 Cadman Plaza East, 7th Floor  
Brooklyn, NY 11201-1820  
Telephone: (718) 254-6024

/s/ Eric B. Beckenhauer  
ERIC B. BECKENHAUER  
Cal. Bar No. 237526  
Trial Attorney  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. NW  
Washington, DC 20530  
Telephone: (202) 514-3338  
Facsimile: (202) 616-8470  
E-mail: eric.beckenhauer@usdoj.gov

*Attorneys for Defendants*